

NTSB Order No. EA-4031

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 23rd day of November, 1993

Respondent .

Docket SE-12079

Respondent, appearing pro se, has appealed from the oral initial decision of Administrative Law Judge Jerrell R. Davis, issued on January 10, 1992, following an evidentiary hearing.<sup>1</sup> The law judge affirmed an order of the Administrator suspending respondent's commercial pilot certificate for 90 days for

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violations of 14 C.F.R. 91.29(a) and (b), 91.9, and 135.65(b).<sup>2</sup>

We deny the appeal.

Respondent was the pilot in command of a Part 135 flight, as follows: Midland, TX - San Angelo, TX - Abilene, TX - Dallas, TX.

Respondent then flew the aircraft from Dallas to Arlington, TX.<sup>3</sup>

The Administrator introduced evidence to show (among other things) that, during taxi at San Angelo, the aircraft's propeller struck the ground, that respondent did not have a mechanic look at the propeller prior to continuing on his route, that the damage to the propeller made the aircraft unairworthy for further flight, and that respondent failed to note the propeller strike in the logbook as he was required to do. One of the

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<sup>2</sup>§ 91.29(a) and (b) read:

(a) No person may operate a civil aircraft unless it is in an airworthy condition.

(b) The pilot in command of a civil aircraft is responsible for determining whether that aircraft is in condition for safe flight. The pilot in command shall discontinue the flight when unairworthy mechanical, electrical, or structural conditions occur.

§ 91.9 (now 91.13(a)) provided:

No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

§ 135.65(b) reads:

(b) The pilot in command shall enter or have entered in the aircraft maintenance log each mechanical irregularity that comes to the pilot's attention during flight time. . . .

<sup>3</sup>We separate discussion of this last leg, as whether it was part of the earlier Part 135 operation is a contested issue. See infra.

Administrator's exhibits was a written statement (misdated) by respondent indicating that the propeller strike had occurred at San Angelo and that, after examining the prop, respondent himself determined that it was airworthy and continued the flight without consulting a mechanic.<sup>4</sup>

Respondent's arguments on appeal are procedural: he believes that various actions by the law judge at the hearing deprived him of a fair hearing. These actions were: 1) failing to advise respondent adequately as to his rights, especially the difference between opening and closing argument and presentation of evidence; 2) eliciting from respondent, prior to the Administrator's presentation of his case, information regarding respondent's position that gave the Administrator an unfair advantage; and 3) hampering and restricting respondent's attempts to prove, through cross examination, what he considered to be a critical fact in his defense -- that the flight from Dallas to Arlington was a Part 91, not a Part 135 flight and, therefore, he did not violate § 135.65(b).

It is not the law judge's role or responsibility to act as counsel for respondents or to ensure that all their legal rights are protected. The information concerning the process before the Board that respondent was provided has been found sufficient to meet procedural requirements. Administrator v. Dugan, 1 NTSB

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<sup>4</sup>The Administrator also introduced a written statement from the FAA inspector who investigated the matter, indicating that respondent had also admitted these events to him.

1968 (1972).<sup>5</sup> Our letter also states our view that it is "advisable" to have counsel. "The manner in which respondent presents his case, and the decision of whether to retain counsel to represent him at the hearing, are matters within the sole discretion of respondent," and the results of those choices are not grounds for reversal of the initial decision or a new hearing. Id. at 1970.

In this case, moreover, the law judge spoke with respondent at great length regarding the conduct of the hearing and respondent's possible roles. See, e.g., Tr. at 9-15, 18. That respondent allegedly did not understand the distinction between opening and closing argument and evidence does not justify a new hearing or dismissal of the charges. The law judge repeatedly told respondent that he could testify in his own defense. Tr. at 12, 117-118. Respondent chose not to do so. The law judge explained and offered respondent the opportunity to request that witnesses be sequestered. He asked respondent, for each exhibit introduced by the Administrator, whether respondent had any objection. All in all, the law judge provided respondent more than adequate assistance to ensure a fair hearing.

We also see no error in the law judge's initial questioning of respondent regarding his position on the allegations in the complaint. In his answer, respondent simply denied violating the cited regulations. He did not answer the factual allegations in

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<sup>5</sup>I.e., our letter to all respondents encloses a copy of relevant rules of practice before the Board and offers to answer any procedural questions.

the complaint, as our rules require.<sup>6</sup> Contrary to respondent's apparent belief, legal proceedings are not designed so that he may keep secret his defense. Just as a respondent is entitled to know, through the complaint and discovery, what the Administrator plans to prove, and how, the Administrator is entitled to know respondent's position on the facts alleged in the complaint, and any affirmative defenses respondent intends to raise. The law judge did not abuse his discretion in questioning respondent for the purposes of understanding the contested issues and promoting an orderly, efficient hearing. And, finally, as the Administrator argues, with no specific showing to the contrary by respondent, there is no indication from the record that the Administrator was assisted by the law judge's questions. Testimony elicited by the Administrator from his own witnesses was directly related to the allegations in the complaint.

Respondent claims, lastly, that the law judge interfered with his cross-examination regarding the applicability of Part 135. We see no such interference from the transcript. Even if we assume that the trip from Dallas to Arlington was a Part 91 operation, this is only significant if the ground strike occurred on that leg of the journey. The un rebutted evidence, including respondent's own written statement, indicates that the ground

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<sup>6</sup>In fact, failure to answer may be taken as an admission. 49 C.F.R. 821.31(c) ("Failure to deny the truth of any allegation or allegations in the complaint may be deemed an admission of the truth of the allegation on allegations not answered. Respondent's answer shall also include any affirmative defense that respondent intends to raise at the hearing.").

strike occurred earlier, at San Angelo, and respondent does not argue that that portion of the journey was not under Part 135. Thus, respondent was obliged to log it, as the manual and the regulation required.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is denied; and
2. The 90-day suspension of respondent's commercial pilot certificate shall begin 30 days from the date of service of this order.<sup>7</sup>

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HAMMERSCHMIDT, and HALL, Members of the Board, concurred in the above opinion and order.

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<sup>7</sup>For the purposes of this order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR § 61.19(f).